



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FCP/145865

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 05, 2013, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner, as a veteran, is exempt for paying his cost share and, if not, whether the cost share obligation has been correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Brian Williams

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is a participant in the Family Care Program (FCP). He filed this appeal to contest his Family Care cost share because he does not believe that, as a veteran, he should be liable for it or that it should be so much.

3. Petitioner has grossed unearned income of \$1624.00 as of the beginning of 2013. This a slight increase over the \$1616.00 of 2012.
4. Petitioner had a cost share for at least the latter part of 2012 in the amount of \$686.00. This decreased to \$592.85 as of February 1, 2013.
5. In the determination of cost share earlier in 2012, Petitioner was credited with a basic needs allowance of \$878 and a special exempt income allowance of \$52.00. This special exempt income appears to be an error in categorization. It was ordered as a special housing allowance by a previous Division of Hearings and Appeals decision for Petitioner, #139452, issued May 14, 2012, in order to correct an error in a prior cost share calculation.
6. In the determination of his February 2013 cost share Petitioner is credited with a basic needs allowance of \$890 (the standard has increased over the 2012 amount) and a special housing amount of \$141.15.
7. Petitioner's special housing allowance was determined by adding his rent of \$325.00 to reported utilities of \$166.15 (\$485.15) and from this sum \$350.00 was subtracted to yield an allowance of \$141.15. Petitioner has no medical, remedial expenses. At hearing Petitioner first reported a new utilities expense of about \$250.00.

DISCUSSION

People eligible for Family Care Medicaid fall into one of the following categories:

Group A eligibility

1. People 18 and over who meet full benefit EBD Medicaid financial and non-financial requirements and who are also functionally eligible for FC at either the nursing home or non-nursing home level of care.
2. People 18 and over who meet BC+ Standard Plan, Well Woman Medicaid, Medicaid through Adoption Assistance or Foster Care financial and non-financial requirements and who are functionally eligible for FC at either the nursing home or non-nursing home level of care.

Group B eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is at or below the special income limit (See the Community Waivers Special Income Limit in 39.4.1)

Group C eligibility

People 18 and over who meet full benefit EBD Medicaid non-financial and financial requirements except for income, who are functionally eligible for FC at the nursing home level of care, and whose income is above the special income limit (see the Community Waivers Special Income Limit in 39.4.1), but whose allowable monthly expenses are sufficient to reduce their income to the medically needy limit (See EBD Medically Needy Limits in 39.4.1.)

Medicaid Eligibility Handbook (MEH), §29.3.1.

The elderly, blind and disabled (EBD) financial income limit is \$591.67 and the Community Waivers Special Income Limit was \$2094.00 through the end of 2012 and went up to \$2130 effective January 1, 2013. *MEH, §39.4.1 and Operations Memo12-63; issued November 28, 2012.* As Petitioner's gross income is \$1624.00, it is apparent that he falls into the group B category of Family Care eligibility. Group B FCP members must make a cost share payment. *Id.*, §28.8.3.

Cost sharing is the monthly amount a waivers participant has to contribute toward the cost of his/her waiver services. *MEH*, § 28.5.1. Payment of the cost share is a condition of eligibility. *Id.* The allowable deductions from income are the personal maintenance allowance and, where the FCP member is the custodial parent, a family maintenance allowance. *MEH*, §§28.8.3.1 and 28.8.3.2. Petitioner is single and not a custodial parent thus the personal maintenance allowance is calculated as follows:

28.8.3.1 Personal Maintenance Allowance

The Personal Maintenance Allowance is an income deduction used primarily when calculating a cost share for a Group B waiver member. However, it is also used in the cost share calculation of a Group C waiver member when completing Section C of the *Spousal Impoverishment* Income Allocation Worksheet (18.6.4).

The personal maintenance allowance (Line 6 and Page 2 of the worksheet) is for room, board, and personal expenses. It is the total of:

1. Community Waivers Basic Needs Allowance (See 39.4.2 EBD Deductions and Allowances)
2. \$65 and ½ earned income deduction (See 15.7.5 \$65 and ½ Earned Income Deduction).
3. Special housing amount. This is an amount of the person's income set aside to help pay housing costs. If the waiver applicant's housing costs are over \$350, add together the following costs:
 - a. Rent.
 - b. Home or renters insurance.
 - c. Mortgage.
 - d. Property tax (including special assessments).
 - e. Utilities (heat, water, sewer, electricity).
 - f. "Room" amount for members in a Community Based Residential Facility (CBRF), Residential Care Apartment Complex (RCAC) or an Adult Family/Foster Allowance.) Home (AFH). The case manager determines and provides this amount.

The total, minus \$350, equals the special housing amount. The person can set this amount aside from his/her income.

...

MEH, §28.8.3.1.

Petitioner argues that he should not have to pay a cost share as there should be an exemption for veterans. Though his service is certainly appreciated, there is no such exemption (see, generally, *MEH*, Chapters 28 – Home and Community Waivers, and 29 - Family Care) and the Division of Hearings and Appeals does not have authority to create exemptions.

As for the calculation of the spend down amount, Petitioner did not have information other than that noted at Finding #s 6 and 7 except for a new utility expense which was first reported to the agency at the hearing. Thus, based upon the evidence available to the agency at the time of the calculation of Petitioner's cost share for February 2013, that cost share amount is correct.

CONCLUSIONS OF LAW

1. That veterans are not exempt from paying a Family Care cost share.
2. That the available evidence indicates that Petitioner's cost share has been correctly calculated.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

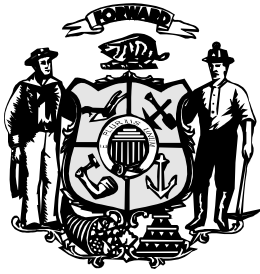
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of March, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 6, 2013.

Milwaukee Enrollment Services
Office of Family Care Expansion